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CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate

COMMITTEE ON
GOVERNMENT OPERATIONS
WASHINGTON, D.C. 20510

DLC 74-0909

May 3, 1974

Mr. William E. Colby, Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Colby:

Re: S. 3393

Attached is a copy of a bill which has been referred to this committee for consideration.

It will be helpful if you will give the committee the benefit of your views regarding the provisions of this bill, and your recommendations as to committee action before May 22, 1974.

Please transmit your reply in quadruplicate.

Thanking you for your cooperation, I am

Sincerely yours,

Sam J. Ervin, Jr.

Sam J. Ervin, Jr.
Chairman

Enclosure

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)
S. 3393

FROM:
OLC
7D35

EXTENSION [ ] NO.

DATE 1 May 1974

STAT

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. DDI DDO ~~DDS&T~~				Senators Edmund S. Muskie (D., Me.) and Jacob K. Javits (R., N. Y.) have introduced a bill, S. 3393, "Government Secrecy Control Act of 1974," which establishes a Joint Committee on Government Secrecy in Congress and a Registrar of National Defense and Foreign Policy Information in the Executive Office of the President. The Joint Committee would oversee classification practices as they affect the Congress. In addition it can order public disclosure of any classified information. The Registrar will oversee classification in the Executive and assumes the responsibilities of the present Interagency Review Committee established under E.O. 11652, which would be abolished. The bill also establishes procedures for the automatic declassification of information. It is suggested that you initiate a review of the bill (excerpt from Record attached) since we will undoubtedly be called upon to submit comments.
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STATINTL 3. [ ] TAT! OGC				
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STATINTL [ ]
Assistant Legislative Counsel

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EXECUTIVE SECRETARIAT

Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	S/MC				
4	DDS&T				
5	DDI				
6	DDM&S				
7	DDO				
8	D/DCI/IC				
9	D/DCI/NIO				
10	OGC				
11	OLC	✓			
12	IG				
13	Compt				
14	D/Pers				
15	D/S				
16	DTR				
17	Asst/DCI				
18	AO/DCI				
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	SUSPENSE	17 May			
		Date			

Remarks:

Executive Secretary

17 May

Date

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3637 (3-74)

STATINTL

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pushed a year behind schedule because brine in the underground water fouls the heat exchangers.

Mr. PACKWOOD. Mr. President, recognizing this trend for what it is—furtherance of the energy oligopoly—I am introducing legislation which will prevent oil companies from reaching out, from grasping and controlling geothermal power. The Geothermal Energy Industry Competition Act simply stated would prevent any person engaged in extracting crude petroleum from acquiring any geothermal energy production asset. It is legislation that anticipates a condition which if unchecked will surely be the subject of congressional investigation and public uproar 20 years from now; for just as we find ourselves in an oil dilemma today, it will be the geothermal controversy that shall surround us tomorrow unless we look to the future with keener vision.

I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3392

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Geothermal Energy Industry Competition Act".

SEC. 2. The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (15 U.S.C. 12–27), is amended by inserting after section 7 the following new section:

"SEC. 7A. (a) It shall be unlawful for any person engaged in commerce in the business of extracting crude petroleum to acquire any geothermal energy production asset after the date of enactment of the Geothermal Energy Industry Competition Act.

"(b) (1) It shall be unlawful for any person described in subsection (a) to own or control any asset, the acquisition of which by him is prohibited under such subsection, more than three years after the date of enactment of the Geothermal Energy Industry Competition Act.

"(2) Each such person which, on the date of enactment of the Geothermal Energy Industry Competition Act owns or controls any asset which that person is prohibited, under subsection (a), from acquiring shall, within 120 days after such date, file with the Attorney General such reports relating to those assets as he may require, and shall, from time to time, file such additional reports relating to those assets as the Attorney General may require.

"(c) It shall be the duty of the Attorney General to commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person violates subsection (a) or (b). Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance.

"(d) Any person knowingly violating the provisions of this Act shall upon conviction be punished by a fine of not to exceed $100,000 or by imprisonment not exceeding ten years, or both, in the discretion of the court. A violation by a corporation shall be deemed to be also a violation by the individual directors, officers, receivers, trustees, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting the violation in whole or in part.

"(e) For purposes of this section, the term—

"(1) 'geothermal energy production asset' means any asset used for the exploration or development of geothermal energy or used for the extraction of geothermal energy; and

"(2) 'asset' means any property, whether real or personal, and includes stock in any corporation which is engaged (directly or through a subsidiary or affiliate) in the business of extracting or producing geothermal energy."

By Mr. MUSKIE (for himself and Mr. JAVITS):

S. 3393. A bill to provide for the establishment of a new office in the Executive Office of the President and of a joint committee in the Congress in order to supervise policies and procedures with respect to the development and review of national defense and foreign policies of the United States and the protection and disclosure of information relating to such policies, and for other purposes. Referred to the Committee on Government Operations.

GOVERNMENT SECRECY CONTROL ACT OF 1974

Mr. MUSKIE. Mr. President, the practice of Government secrecy gives a higher priority to confidentiality than to candor. It encourages deception instead of disclosure. And it feeds the suspicion of many Americans that their Government will not tell them the truth.

Yet, as we all recognize, a certain degree of secrecy is essential to protect our defense and to promote the success of our foreign policies in a world where nations hostile to our interests hold both the power and the intent to undermine our cause and that of freedom.

In our democracy there is an inherent conflict between the need for secrecy and the need for a fully informed public. The only answer to that conflict is to find the balance between a society that is open and one that is dangerously exposed.

That balance is not easy to strike or keep. In recent years especially, as Presidential authority to determine our national security interests grew without effective check, the balance was upset. Secrecy—often self-serving, often unjustified—expanded at the expense of public knowledge and public trust.

Mr. President, the legislation I introduce today with the cosponsorship of the distinguished senior Senator from New York (Mr. JAVITS), the Government Secrecy Control Act, is an effort to restore the balance between secrecy and accountability by restoring the balance between the powers of the executive and legislative branches over national security policy and the information essential to its determination.

I view this bill as part of the broad, historic effort by the 93d Congress to redress the constitutional balance between the branches. It is a companion measure to the war powers legislation enacted over the President's veto and to the executive privilege and impoundment bills the Senate passed last session. I also see it as complementing the intent of the Budget Reform Act we recently approved, another means to strengthen the Congress by organizing it to inform itself and act effectively on vital issues.

There are pending in the Senate and the other body many interesting and important proposals to reexamine and restructure executive secrecy practices. Some would fix the time that information could be kept secret and restrict the numbers of officials who could impose secrecy. Some would vest extensive powers of review over the administration of information classification practices in a new, independent authority—a proposal I introduced in December 1971. And some would create in Congress a committee with power to declassify any information it found worthy of disclosure in the public interest.

The legislation I offer today incorporates some of the features of other bills. But it approaches the problems of secrecy from the perspective of sharing a constitutional power, the power to withhold or disclose sensitive information.

By default and inaction, responsive to the perceived, leading role of the President in dealing with cold war tensions, the Congress has permitted that power over information to lodge exclusively in the Executive. And the result of our one-way grant of discretion over secrecy policy has, inevitably, been abuses of power, a system of information classification which serves neither the interests of intelligent policymaking nor the requirements of an informed citizenry.

I do not need to review here the record of secrecy abuses in this administration and its predecessors. It is enough to note that standard classification stamps on documents no longer serve to protect information from disclosure. On the contrary, a "secret" marking on an official document often makes officials and journalists suspect that the contents are being hidden from the public more to conceal mistaken or questionable actions, than to promote national security.

The administration recognized this widespread disdain for the classification system in 1972 and issued Executive Order 11652 to reform the system. On the whole, the intent of the reforms is good. But their implementation has been haphazard at best.

The Government-wide machinery established to police the reforms, the Interagency Classification Review Committee, has not proved as effective as it should. One reason for its inadequacy is simple; it has no bureaucratic power. The full committee meets once a month in the White House, but its real work is carried out from an office in the Archives, where the committee staff consists of only two people: an Executive Director and his secretary.

If we understand that decisions on requiring or dropping secrecy are essentially matters of individual judgment where precise standards cannot be automatically applied to every case, then we realize that the surest way to regulate the thousands of officials who must make such judgments daily is to subject their decisions to continuous, impartial review. The review procedures in Executive Order 11652 are a step in the right direction, but the step is incomplete. All of the review is carried out inside the executive branch, and most of it is carried out at the lower policymaking levels of the very agencies where the volume of clas-

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sified information—and of information improperly classified—is greatest.

The Government Secrecy Control Act would strengthen that review process within the executive branch. But, more importantly, it would expand the review power to Congress. By sharing the discretion to impose and maintain secrecy, the legislation would assure that the difficult, delicate, individual judgments about secrecy are checked and rechecked. Only through such thorough review can we establish that elusive, essential balance between secrecy and openness.

The review would begin in the executive branch, where a new office—with the power and staff which the Interagency Committee now lacks—would be established in the White House for the Registrar of National Defense and Foreign Policy Information. The Registrar would a Presidential appointee, confirmed by the Senate, with power to oversee and regulate secrecy practices throughout the Federal Government.

He would also have the key function of compiling a monthly index, a register of classified information from every agency. It would be his responsibility to check the entries on that register to see that they actually describe the records being kept secret and their origin and location, and to see that the duration of secrecy imposed on them meets the policy standard of the act.

The bill, additionally, will link the Freedom of Information Act and its intent of broadening public access to official information directly to the reformed classification system. No information relating to national defense or foreign policy could be withheld from the public under the first exemption from disclosure in the Freedom of Information Act, unless the documents or records containing that information had been indexed on the register.

Under the provisions of the National Security Council directive of May 17, 1972, implementing the Executive order such indexing is supposed to be standard practice for classified material judged to have "sufficient historical or other value appropriate for preservation," including all top secret documents and all secret and confidential documents which are exempted from the order's general declassification schedule. In fact, some agencies are indexing all of their classified material. But the Defense Department, which generates the largest volume of such information, is only now beginning—late and tentatively—to establish any such index at all.

In compiling a Government-wide central index, the Registrar will act as the first line of defense against classification abuses. Able to know what is being kept secret, his office will also be able to correct improper agency secrecy practices. Without such knowledge, no one can hope to bring the classification system under control. With an effective index in operation, officials will be able to inspect the system, trace its flaws, and make it stronger.

The Register compiled in the White House will also be transmitted every month to the New Joint Committee on Government Secrecy, in effect, the second line of defense against unjustified secrecy. The first of the committee's specific tasks will be to review the monthly Register as a way of reviewing the performance of the Registrar and of the agencies under his supervision.

The committee will have explicit authority to obtain documents or records listed on the Register and, if it finds them improperly classified, to direct that they be disclosed or that the date of their declassification be changed. If this legislation would make the Registrar a "secrecy czar," it would also make the joint committee a powerful watchdog over his office and authority.

The committee will be authorized to take "necessary or appropriate" action to enforce compliance with its subpenas or directives on a recalcitrant agency. Specifically, the committee will have the power to go to the U.S. district court to seek judicial enforcement of its will, just as the Watergate Committee is now doing in the matter of its contested subpena of President Nixon's records.

The committee's second specific task would be that of developing procedures for congressional handling of secret information. Few of our committees now have precise rules for handling classified records, and none have their own standards for security clearance of congressional employees. As a result, Members of Congress and their staffs are really at the mercy of executive decisions as to who may see or discuss what information. The joint committee, would be able to establish the basic ground-rules for the entire Congress in this respect and, in consultation with the Registrar, would act as arbiter between Members or committees of Congress seeking access to classified information and agencies seeking to withhold it or to dictate the terms of its disclosure.

More broadly, the joint committee would have the role of overall congressional monitor of national security policy. With the information available from the index, the committee will be in a position to steer other committees, foreign relations and armed services most obviously, into areas of inquiry and oversight they might otherwise miss. But the joint committee's own oversight should extend to assisting the coordination of policy by often competitive executive departments and to assuring a channel of full communication and current consultation between those departments and the Congress.

Finally, the legislation sets a standard for secrecy embodying both the positive finding that information is permitted to be kept secret only when its disclosure "would harm the national defense or foreign policy" and the negative rule that information shall not be concealed to hide "incompetence, inefficiency, wrongdoing or administrative error" or simply to avoid embarrassing officials or agencies. That standard is not precise and automatic. I believe, as I said earlier, that no one standard can be.

But, by design, the standard differs from existing practice in the executive branch by requiring classifiers to make a determination that disclosure would harm national defense or foreign policy, not the broader, more inclusive and less precise concept of "national security." The proposed narrowing of the standard reflects my concern that too loose a terminology in the past has permitted many of the abuses of classification authority. The tighter language should serve both to protect secrets which are vital and to encourage the flow of information which must be shared among our policymakers and with the public.

One of the most serious concerns with excessive secrecy is the role it plays in bureaucratic gamesmanship, enabling one official to keep his proposals and actions hidden from others who share his concerns, but not necessarily his views. It is essential that policy be made after the most exhaustive examination of alternatives and the fullest debate. When secrecy is used to short-circuit dissent, when policy is shaped by only a select few, it becomes doubly difficult to conduct policy or insure support for it even within the Government.

Unlike similar legislation offered in this Congress, the Government Secrecy Control Act dictates few specific practices to the Executive with respect to the length of time information may stay classified or the agencies or officials who may classify. The bill would establish the presumption that any classified material more than 10 years old be considered declassified unless the registrar, with prompt, specific notification to the joint committee, decided to enter it on the index. It would also give agencies 4 years in which to review their files of classified material originated within 10 years of the enactment of this legislation and to decide which records in those files should be put on the Register and which should be declassified.

But I regard declassification schedules and classification authority as being primarily housekeeping concerns which can best be regulated by the executive itself under the review of an informed Congress. One problem with mandating such limits now is that we lack information on the actual operation of the classification system. After the joint committee has been at work for a time, we may be in a better position to legislate in detail.

One danger in fixing secrecy time limits by law, rather than encouraging flexibility in practice, is that maximums become minimums. Thus, if a document classified "confidential" is required to be declassified 4 years after its origin as the present Executive order mandates, it will stay secret for 4 years, even if the information it contains only needs protection for 10 days.

Those who originate classified material should think of its declassification less in terms of months or years and more in terms of the events to which the material relates and the need of the community—scientific, specialized, or general—for access to information. Again, the considerations are subtle judgments about balance. Such decisions cannot be greatly facilitated by concrete time limits.

Also, unlike the proposal I offered myself over 2 years ago, this legislation would not establish an independent classification review authority, but would strengthen review procedures within the

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executive and impose a new level of Congressional review. I have concluded that a branch with equal power—not an independent body—can best exert the necessary check over another branch. The Congress shares responsibility with the executive for the conduct of the national defense and of foreign policy. We should equip ourselves to carry our share of that responsibility fully.

Mr. President, Lord Acton is famous for his aphorism on the corrupting effect of absolute power. He also said, in the same vein:

Everything secret degenerates, even the administration of justice; nothing is safe that does not show it can bear discussion and publicity.

It is the purpose of the Government Secrecy Control Act to share what has been absolute power over secret information and to insure, through that constitutional division of power and responsibility, that we halt the degeneration of public trust that stems from excessive secrecy.

The balance between openness and overexposure in a free society in an unfree world is, I acknowledge, extremely difficult to find and perhaps even harder to maintain under the pressure of events. But it was the proud boast of Pericles, in his funeral oration for the men of Athens who died in the first year of the Peloponnesian War, that—

We Athenians are able to judge . . . all events . . . and instead of looking on discussion as a stumbling block in the way of action, we think it an indispensable preliminary to any wise action at all.

Our heritage of free speech is in the Athenian tradition. Like Pericles, we cherish the faith that men can govern themselves, that they can choose between right and wrong policies, that they can bargain openly in the marketplace of ideas and can strike the proper balance between private interest and the public good.

Secrecy upsets that balance. It corrupts the commerce of ideas. It blurs the distinction between right and wrong, and it erodes the foundation of self-government.

It is my hope that with this legislation we can begin to regain control over secrecy in Government, that we can further redress the balance of power between the branches of Government and between the Government and and the governed.

Mr. President, I ask unanimous consent that the text of the bill be included in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3393

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. That this Act may be cited as the "Government Secrecy Control Act of 1974".

STATEMENT OF FINDINGS AND PURPOSE

SEC. 2. Congress finds and declares that—

(1) the development and review of the national defense and foreign policies of the United States are Constitutional responsibilities which are shared by the legislative and executive branches of the Federal Government;

(2) the proper execution of the shared constitutional responsibility requires that maximum access to information relating to national defense and foreign policies must be afforded to the Congress;

(3) there is a need for the maintenance of procedures under which certain information relating to the national defense and foreign policies of the United States be kept secret; and

(4) the excessive or unnecessary imposition of secrecy limits access to such information and thereby prevents Congress from carrying out its constitutional responsibility in the development and review of such policies, hinders the proper development and execution of such policies within the executive branch, and impedes public understanding of such policies and their implementation.

(b) It is the purpose of this Act to establish in the Congress and in the executive branch a system to assure that national defense and foreign policy information is made available as necessary for the fulfillment of the Congress' constitutional responsibilities, to assure that procedures are established and maintained to protect information which in fact requires secrecy, and to promote the maintenance of an informed public.

STATEMENT OF POLICY

SEC. 3. It is the policy of the United States Government to permit information relating to the national defense or foreign policy of the United States to be kept secret only when the disclosure of such information would harm the national defense or foreign policy or when such information has been provided to the Government of the United States by a foreign government or international organization pursuant to an agreement which conforms to the policy of this section and which precludes the release of such information without the consent of that foreign government or international organization. It is also the policy of the United States Government not to permit information to be kept secret in order to impede access by Congress to such information or to conceal incompetence, inefficiency, wrongdoing, or administrative error, to avoid embarrassment to any officer or agency, or to restrain competition or independent initiative.

JOINT COMMITTEE ON GOVERNMENT SECRECY

SEC. 4. (a) (1) There is hereby established a Joint Committee on Government Secrecy (hereinafter referred to as the "Joint Committee") which shall be composed of the Speaker of the House of Representatives, the majority and minority leaders of the Senate and the House of Representatives, four other Members of the Senate appointed by the President of the Senate, and four other Members of the House of Representatives appointed by the Speaker of the House of Representatives.

(2) A vacancy in the Joint Committee shall not affect the power of the remaining members to execute the functions of the Joint Committee, and shall be filled in the same manner as the original selection. The chairman of the Joint Committee shall be selected by the members of the Joint Committee.

(3) The Joint Committee and any subcommittee thereof, is authorized, in its discretion (A) to make expenditures from the contingent fund of the Senate, (B) to employ personnel, (C) to hold hearings, (D) to sit and act at any time or place during the sessions, recesses, and adjourned periods of the Congress, (E) to require, by subpena or otherwise, the attendance of witnesses and the production of correspondence, books, papers, and documents, (F) to take depositions and other testimony, (G) to procure the temporary services (not to exceed one year) of experts or consultants or organizations thereof by contract at rates of pay not in excess of the per diem equivalent of the highest rate of basic pay paid under the General Schedule of section 5332 of title 5, United States Code, including payment of such rates for necessary traveltime, and (H) with the prior consent of the Government department or agency concerned, to use on a reimbursable basis the services of personnel of any such department or agency.

(4) Subpenas may be issued by the Joint Committee or by a subcommittee thereof, over the signature of the chairman of the Joint Committee or subcommittee or any member designated by either of them, and may be served by any member designated by any such chairman or member. Any such chairman or member may administer oaths to witnesses.

(5) Service of a Senator as a member or as chairman of the Joint Committee shall not be taken into account for the purpose of paragraph 6 of Rule XXV of the Standing Rules of the Senate.

(6) The expenses of the Joint Committee shall be paid from the contingent fund of the Senate on vouchers approved by the chairman of the Joint Committee

(b) (1) It shall be the principal duty of the Joint Committee to review the practices of Government departments and agencies originating or having custody of information designated to be kept secret pursuant to the policy of this Act and, upon determination that such practices fail to conform to that policy, to direct their revision. In carrying out this duty, the Joint Committee shall receive and review the Register of National Defense and Foreign Policy Information when transmitted under section 6(d), receive reports from the Registrar of National Defense and Foreign Policy Information, and receive notifications from the Registrar under section 6(c)(2) and (3) and section 7(b). In conducting such review, the Joint Committee may direct any agency originating or having custody of a document or other matter with respect to which an entry on the Register is made, to furnish that document or other matter to the Joint Committee for inspection to determine the propriety of the extent of protection accorded the document or other matter.

(2) Having conducted such inspection and reached such a determination, the Joint Committee shall, when appropriate, direct the public disclosure, in whole or in part, of such document or other matter or direct that the date entered on the Register in accordance with section 6(c)(1)(F) be changed.

(3) Upon consideration of reports from the Registrar and notifications from the Registrar in accordance with sections 6(c)(2) or (3) and section 7(b), the Joint Committee may direct the Registrar to modify authorizations given for aggregate entries on the Registar or for substituting codes for names of officials originating documents or other matters and may direct the Registrar to remove from the Register any entry or portion of any entry made for documents or other matters originated 10 years or more prior to the effective date of this Act.

(4) (A) Directives, including supenas, issued by the Joint Committee under paragraph (2) or (3) shall issue upon a two-thirds vote of the Members of the Joint Committee. In the case of any failure of the Registrar or any agency to respond within 15 days to directives or subpenas issued under paragraph (1), (2) or (3), the Joint Committee shall take such other action as may be necessary or appropriate, including bringing an action to enforce its directive or subpena.

(B) The United States District Court for the District of Columbia shall have original jurisdiction of actions brought pursuant to

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this paragraph without regard to the sum or value of the matter in controversy. The court shall have power to issue a mandatory injunction or other order as may be appropriate, and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the subpena or directive issued pursuant to this clause. The Joint Committee, in bringing or prosecuting an action pursuant to this paragraph, may be represented by such attorneys as it may designate. Appeal of the judgment and orders of the court in such actions shall be had in the same manner as actions brought against the United States under section 1346 of title 28, United States Code. The courts shall give precedence over all other civil actions to actions brought under this paragraph.

(c) It shall also be the responsibility of the Joint Committee to—

(1) recommend to Members and to other committees of Congress procedures for protecting or disclosing documents or other matters held by Members or committees and designated secret by authorized officials of the Executive Branch pursuant to the policy of this Act;

(2) recommend action by other committees or officers of Congress to be taken on requests for public disclosure of or access to documents or other matters originated by them or under their control and designated secret by them or other agencies of Congress; and

(3) recommend to Members and to other committees of Congress procedures for granting or denying employees of Congress access to documents or other matters designated secret pursuant to the policy of this Act and for disciplining any such employees for breaching such procedures.

(1) make available to Members and other committees of Congress and to the public such portions of the contents of the Register and such reports from the Registrar as the Joint Committee decides independently or upon request are necessary to the activity of Members or committees of Congress or appropriate to the maintenance of an informed public; and

(2) recommend to the Congress such legislation relating to the protection or disclosure of information dealing with the national defense or foreign policy as may be necessary or appropriate; and

(3) file reports at least annually, and at such other times as may be appropriate, with the Senate and the House of Representatives, containing its findings and recommendations with respect to the matters under its jurisdiction.

REGISTRAR OF NATIONAL DEFENSE AND FOREIGN POLICY INFORMATION

SEC. 5. (a) There is hereby established in the Executive Office of the President an Office of National Defense and Foreign Policy Information (hereinafter referred to as the "Office"). The Office shall be headed by a Registrar of National Defense and Foreign Policy Information (hereinafter referred to as the "Registrar") who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) It shall be the function of the Registrar—

(1) to compile and transmit the Joint Committee on Government Secrecy a Register of National Defense and Foreign Policy Information in accordance with the provisions of section 6;

(2) to review entries on the Register to determine whether they comply with the policy stated in section 3, and with the provisions of section 6 of this Act, and to adjust those entries which are not in compliance with that policy or section or with the standards established by statute or Executive Order consistent with the policy of this Act for the imposition and duration of secrecy on information relating to the national defense and foreign policy of the United States;

(3) to recommend to the President, after reviewing existing orders and regulations and their administration, procedures authorizing Federal departments and agencies and the officials thereof to designate information relating to the national defense and foreign policy to be kept secret and to withdraw such designations and providing for the monthly submission by such departments, agencies and officials of entries for the Register;

(4) to report not later than March 31 of each year, to the President and the Congress on the administration of such regulations and orders within the executive branch, including (A) the numbers and titles of officials within Federal departments and agencies authorized to designate information relating to the national defense and foreign policy to be kept secret and to withdraw such designations, (B) the number of documents or other matters designated to be kept secret and withdrawn from secrecy during the preceding 12 months in each Federal department and agency, (C) the number of such documents or other matters designated in each Federal department and agency during that 12 months to be kept secret for a period in excess of 3 years from the date of origination of the document or other matter, and (D) the number and result of investigations in the preceding 12 months in each Federal department and agency into breaches of such regulations and orders;

(5) to review with the appropriate officials of any Federal department or agency any proposed final administrative action which would deny access by any person to information requested to be made available to that person under section 552 of title 5, United States Code, on the grounds that such information is exempted from disclosure to the public under the terms of subsection (b)(1) of that section and to approve or disapprove such action; and

(6) to review and promulgate regulations to standardize such other practices within the executive branch relating to secrecy of information, including security clearance procedures, routing designations for information and security measures for automatic data processing systems of secret information, as the Registrar deems necessary and appropriate to the fulfillment of the purposes of this Act.

(c) The Registrar is authorized (1) to appoint such officers and employees as may be necessary to carry out his functions; (2) to employ experts and consultants in accordance with section 3109 of title 5, United States Code, at rates not in excess of the maximum daily rate prescribed for GS–18 under section 5332 of such title for each day they are so employed (including traveltime) and pay such persons travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of such title for persons in Government service employed intermittently; and (3) to the fullest extent possible, to utilize the services, facilities, and information, including statistical information, of other Federal agencies in carrying out his functions.

(d) The Interagency Classification Review Committee established by Executive Order 11652, March 8, 1972, is hereby abolished, and the personnel, assets, liabilities, property, and records thereof are hereby transferred to the Registrar.

(e) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(22) Registrar, National Defense and Foreign Policy Information."

MAINTENANCE OF THE REGISTER OF NATIONAL DEFENSE AND FOREIGN POLICY INFORMATION

SEC. 6. (a) Any document or other matter which is originated after the effective date of this Act may not be kept secret pursuant to the policy of this Act or withheld from the public in accordance with section 552 (b)(1) of title 5, United States Code, unless an entry in the Register of National Defense and Foreign Policy Information meeting the requirements of this section is made with respect to such document or other matter.

(b) In carrying out his functions under section 5(b) the Registrar shall follow the procedures established in this section. Any document or other matter in the custody of the United States Government which is designated to be kept secret pursuant to the policy of this Act shall be entered on the Register in accordance with subsection (c) within twenty days after the date on which the document or other matter was originated, except that, in the case of any document or other matter which is originated outside the United States (other than a document or other matter originated by a foreign government), such entry shall be made within twenty days after the date on which that document or other matter was received by an agency in the United States.

(c)(1) Except as provided in paragraphs (2), (3), and (4), each entry required to be made in the Register shall contain the following information:

(A) a concise and complete description of the subject matter, including the title, if any, of the document or other matter;

(B) the name of the agency which originated the document or other matter;

(C) the name and title of the official who designated the document or other matter to be kept secret;

(D) the name of each agency to which such document or other matter was disseminated;

(E) the date on which the document or other matter was originated and the date on which it was designated to be kept secret; and

(F) the date on which such designation of the document or other matter can be withdrawn pursuant to the policy of this Act.

Each entry shall be indexed alphabetically by the title or subject matter of the document or other matter, and alphabetically by the name of the agency which originated the document or other matter.

(2) At the discretion of the Registrar and upon timely explanatory notification by the Registrar to the Joint Committee, agencies are authorized to make aggregate entries on the Register with respect to categories of documents or other matters which are too voluminous in quantity or too similar in content to require separate indexing.

(3) At the discretion of the Registrar and upon explanatory notification to the Joint Committee, agencies are authorized to substitute for the name and title of the official required by paragraph (1)(C) of this subsection a code and title identifying such official whose activity in gathering, transmitting, or analyzing secret information requires anonymity in the interest of his personal safety.

(4) No document or other matter destined for disposal within 60 days of its origination, such as a working paper or draft report, is required to be entered on the Register.

(d) A Duplicate Register covering all documents or other matters determined to require protection shall be transmitted to the Joint Committee not later than the fifth day of the month following the month in which such determinations were made.

TRANSITIONAL PROVISIONS

SEC. 7. (a) Upon the expiration of 4 years following the effective date of this Act, no document or other matter which was orig-

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inated less than 10 years prior to such date may be withheld from the public pursuant to the policy of this Act or to section 552(b) (1) of title 5, United States Code, unless an entry meeting the requirements of section 6(c) has been made with respect to such document or other matter.

(b) After the effective date of this Act, no document or other matter which was originated 10 years or more prior to such date may be withheld from the public pursuant to the policy of this Act or to section 552(b) (1) of title 5, United States Code, unless the Register makes an entry meeting the requirements of section 6(c) with respect to such document or other matter and immediately notifies the Joint Committee of such entry.

AUTHORIZATION

SEC. 8. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

EFFECTIVE DATE

SEC. 9. This Act shall take effect 180 days after the date of its enactment.

Mr. JAVITS. Mr. President, I am pleased to join today with Senator MUSKIE in introducing the Government Secrecy Control Act."

The bill we introduce today addresses an issue of extraordinary importance to the American people—not only in the context of the Watergate affair, but in the long, historical context of the role of the Congress in exercising its constitutional responsibilities respecting the national defense and security policies of the United States.

Senator MUSKIE and I, and other Members of the Senate have sought throughout this Congress to restore the separation of powers by reinforcing the power and reaccepting the responsibility of the legislative branch in a wide variety of policy areas.

We have acted in the face of a pattern of conduct by Presidents, since 1932, the result of which has been a dangerous concentration of power in the Presidency. The accumulation and exercise of such power is a direct challenge to the basic constitutional principles of the separation and balance of powers between the three coordinate branches of Government.

We have acted already on the war powers issue, on budget control, on impoundment and on executive privilege—to restore to the representatives of the American people the authority which has been drained from them. In introducing this bill today, we act again to achieve this objective.

A national security classification system is necessary to protect our defense and to enable the executive department to carry out its foreign policy. However, the nature of that system, its administration and the exercise of classification authority must be the object of the most careful scrutiny to assure that fundamental principles of our democracy are not subverted. Maintaining the balance between protecting our national security and providing to the American public the information which it must have to fulfill its obligations under the democratic charter will not be easy.

I believe that action is long overdue in redefining the problem, questioning the basic assumptions and establishing that critical balance. Our bill is a starting point for what I know will be a most careful examination of this issue in Senator MUSKIE's Subcommittee on Intergovernmental Relations.

The current classification system is costly, inefficient and troublesome. It encourages large scale overclassification, a practice which in turn stimulates security laxness and jeopardizes the protection of material deserving national security classification. I think it well for us to recall Justice Potter Stewart's opinion in the "Pentagon Papers" case wherein he stated:

> That the hallmark of a truly effective internal security system would be maximum possible disclosure, recognizing that secrecy can best be preserved only where credibility is truly maintained.

According to some estimates, there may be 20 million classified papers currently held in the Federal Government, of which a very large percentage should not be classified at all. They are thousands upon thousands of employees who exercise the original authority to classify documents. Current practice sometimes tolerates classification of history, newspaper clippings and principles of nature.

Mr. President, steps have been taken in this administration to question and reform classification practices. Under Executive Order 11652 issued by President Nixon in 1972, each agency originating classified documents must index them and have its classification practices reviewed by the Interagency Classification Review Committee. There is also underway in the Department of Defense a formal evaluation of information policies as they actually exist and a stated goal of downgrading many documents through more realistic security classification guides.

Under our proposal, we seek to facilitate this process and to establish a vehicle by which Congress can monitor classification practices, review actions of the executive branch departments and agencies, and order the declassification of classified information. The new Joint Committee on Government Secrecy created by our bill could go to court to enforce its subpenas if necessary.

Of equal importance, the committee would be required to develop procedures for congressional handling of classified information. I believe that the committees of the Congress must develop such precise rules and standards for their own employees.

Mr. President, this bill will enable us to lay the groundwork for a more rational national security classification system as well as to restore the eroded power of the Congress in yet another important area. Most importantly it will make the operations of the Federal Government more open and credible to our people.

By Mr. SPARKMAN (by request):

S. 3394. A bill to amend the Foreign Assistance Act of 1961, and for other purposes. Referred to the Committee on Foreign Relations.

Mr. SPARKMAN. Mr. President, by request, I introduce for appropriate reference a bill to amend the Foreign Assistance Act of 1961 and for other purposes.

The bill has been requested by the President of the United States and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when it is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with the section-by-section analysis.

There being no objection, the bill and analysis were ordered to be printed in the RECORD, as follows:

S. 3394

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, That this Act may be cited as the "Foreign Assistance Act of 1974".

TITLE I

MIDDLE EAST PEACE

SEC. 2. The Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new part:

"PART

"SEC. 901. STATEMENT OF POLICY.—The Congress recognizes that a peaceful and lasting resolution of the divisive issues that have contributed to tension and conflict between nations in the Middle East is essential to the security of the United States and the cause of world peace. The Congress declares and finds that the United States can and should play a constructive role in securing a just and durable peace in the Middle East by facilitating increased understanding between the Arab nations and Israel, and by assisting the nations in the area in their efforts to achieve economic progress and political stability, which are the essential foundations for a just and durable peace. It is the sense of Congress that United States assistance programs in the Middle East should be designed to promote mutual respect and security among the nations in the area and to foster a climate conducive to increased economic development, thereby contributing to a community of free, secure and prospering nations in the Middle East.

"SEC. 902. GENERAL AUTHORITY.—The President is authorized to furnish, on such terms and conditions as he may determine, assistance authorized by this Act and credits and guaranties authorized by the Foreign Military Sales Act in order to carry out the purposes of this part.

"SEC. 903. ALLOCATIONS.—(a) Of the funds appropriated to carry out chapter 2 of part II of this Act, during the fiscal year 1975 up to $100,000,000 may be made available for military assistance in the Middle East.

"(b) Of the funds appropriated to carry out chapter 4 of part II of this Act, during the fiscal year 1975 up to $377,500,000 may be made available for security supporting assistance in the Middle East.

"(c) Of the aggregate ceiling on credits and guaranties established by section 31(b) of the Foreign Military Sales Act, during the fiscal year 1975 up to $330,000,000 shall be available for countries in the Middle East.

"SEC. 904. (a) SPECIAL REQUIREMENTS FUND.—

"There are authorized to be appropriated to the President for the fiscal year 1975 not to exceed $100,000,000 to meet special requirements arising from time to time in carrying out the purposes of this part, in addition to funds otherwise available for such purposes. The funds authorized to be appropriated by this section shall be available for use by the President for assistance authorized by this Act in accordance with the provisions applicable to the furnishing

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of such assistance. Such funds are authorized to remain available until expended.

"(b) The President shall keep the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Speaker of the House of Representatives currently informed on the programming and obligation of funds under subsection (a)."

SEC. 3. Section 620(p) of the Foreign Assistance Act of 1961 is repealed.

TITLE II

INDOCHINA POSTWAR RECONSTRUCTION

SEC. 4. Section 802 of the Foreign Assistance Act of 1961 is amended to read as follows:

'SEC. 802. AUTHORIZATION.—There are authorized to be appropriated to the President to furnish assistance for relief and reconstruction of South Vietnam, Cambodia and Laos as authorized by this part, in addition to funds otherwise available for such purposes for the fiscal year 1974 not to exceed $504,000,000, and for the fiscal year 1975 not to exceed $939,800,000 which amounts are authorized to remain available until expended."

TITLE III

FOREIGN ASSISTANCE ACT AMENDMENTS

DEVELOPMENT ASSISTANCE AUTHORIZATIONS

SEC. 5. Section 103 of the Foreign Assistance Act of 1961 is amended by striking out the words "$291,000,000 for each of the fiscal years 1974 and 1975" and inserting in lieu thereof "$291,000,000 for the fiscal year 1974, and $546,300,000 for the fiscal year 1975".

HOUSING GUARANTIES

SEC. 6. Section 223(i) of the Foreign Assistance Act of 1961 is amended by striking out "June 30, 1975" and inserting in lieu thereof "June 30, 1976".

INTERNATIONAL ORGANIZATION AND PROGRAMS

SEC. 7. Section 302(a) of the Foreign Assistance Act of 1961 is amended by striking out the words "for the fiscal year 1975, $150,000,000" and inserting in lieu thereof "for the fiscal year 1975, $153,900,000".

MILITARY ASSISTANCE

SEC. 8. (a) Chapter 2 of Part II of the Foreign Assistance Act of 1961 is amended as follows:

(1) In section 504(a), strike out "$512,500,000 for the fiscal year 1974" and insert in lieu thereof "$985,000,000 for the fiscal year 1975".

(2) In section 506(a)—

(A) Strike out "the fiscal year 1974" in each place it appears and insert in lieu thereof "the fiscal year 1975"; and

(B) At the end of subsection (a) add the following sentence: "Orders not exceeding $250,000,000 in value may be issued under this subsection, upon such determination during the period of any succeeding fiscal year that precedes the enactment of legislation authorizing appropriations for military assistance for that fiscal year."

(3) After section 506, add the following new section:

"SEC. 507. LIMITATION ON THE GRANT OF EXCESS DEFENSE ARTICLES.—

"(a) Except as provided in section 506, the aggregate value of excess defense articles ordered during the fiscal year 1975 under this chapter for foreign countries and international organizations shall not exceed $150,000,000.

"(b) The Secretary of State shall promptly and fully inform the Speaker of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate of each decision to furnish on a grant basis to any country excess defense articles which are major weapons systems to the extent such major weapons system was not included in the presentation material previously submitted to the Congress. Additionally, the Secretary of State shall also submit a quarterly report to the Congress listing by country the total value of all deliveries of excess defense articles, disclosing both the aggregate original acquisition cost and the aggregate value at the time of delivery."

(b) Section 655(c) of the Foreign Assistance Act of 1961 shall not apply to assistance authorized under any provision of law for the fiscal year 1975.

(c) Section 8 of the Act entitled "An Act to amend the Foreign Military Sales Act, and for other purposes", approved January 12, 1971 (84 Stat. 2053), as amended, is repealed, effective July 1, 1974.

SECURITY SUPPORTING ASSISTANCE

SEC. 9. Section 532 of the Foreign Assistance Act of 1961 is amended by striking out "for the fiscal year 1974 not to exceed $125,000,000, of which not less than $50,000,000 shall be available solely for Israel" and inserting in lieu thereof "for the fiscal year 1975 not to exceed $385,500,000".

TITLE IV

FOREIGN MILITARY SALES ACT AMENDMENTS

SEC. 10. (a) The Foreign Military Sales Act is amended as follows:

(1) Section 3(c) is amended to read as follows:

"(d) A country shall remain ineligible in accordance with subsection (c) of this section until such time as the President determines that such violation has ceased, that the country concerned has given assurances satisfactory to the President that such violation will not recur, and that, if such violation involved the transfer of sophisticated weapons without the consent of the President, such weapons have been returned to the country concerned."

(2) In section 24(a) and section 24(b) the parenthetical phrase in each is amended to read: "(excluding United States Government agencies other than the Federal Financing Bank)".

(3) Section 24(c) is amended to read as follows:

"(c) Funds made available to carry out this Act shall be obligated in an amount equal to 25 per centum of the principal amount of contractual liability related to any guaranty issued prior to July 1, 1974 under this section. Funds made available to carry out this Act shall be obligated in an amount equal to 10 per centum of the principal amount of contractual liability related to any guaranty issued after June 30, 1974 under this section. All the funds so obligated shall constitute a single reserve for the payment of claims under such guaranties, and only such of the funds in the reserve as may be in excess from time to time of the total principal amount of contractual liability related to all outstanding guaranties under this section shall be deobligated and transferred to the general fund of the Treasury. Any guaranties issued hereunder shall be backed by the full faith and credit of the United States."

(4) In section 31—

(A) Subsection (a) is amended by striking out "$325,000,000 for fiscal year 1974" and inserting in lieu thereof "$555,000,000 for the fiscal year 1975"; and

(B) Subsection (b) is amended by striking out "$730,000,000 for the fiscal year 1974, of which amount not less than $300,000,000 shall be available to Israel only" and inserting in lieu thereof "$873,500,000 for the fiscal year 1975."

(5) In section 33—

(A) subsection (a) is repealed;

(B) subsection (b) is redesignated as subsection (a); and

(C) a new subsection (b) is added as follows:

"(b) The President may waive the limitations of this section when he determines it to be important to the security of the United States and promptly so reports to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate."

(b) Obligations initially charged against appropriations made available for purposes authorized by section 31(a) of the Foreign Military Sales Act after June 30, 1974, and prior to the enactment of the amendment of that Act by paragraph (3) of subsection (a) of this section in an amount equal to 25 per centum of the principal amount of contractual liability related to guaranties issued pursuant to section 24(a) of that Act shall be adjusted to reflect such amendment with proper credit to the appropriations made available in the fiscal year 1975 to carry out that Act.

SECTION-BY-SECTION ANALYSIS OF THE PROPOSED FOREIGN ASSISTANCE ACT OF 1974

I. INTRODUCTION

The proposed Foreign Assistance Act of 1974 (hereinafter referred to as "the Bill") is an amendment to the Foreign Assistance Act of 1961, as amended (hereinafter referred to as "the Act"). The Bill also amends the Foreign Military Sales Act (hereinafter referred to as "the FMSA"). The major purpose of the bill is to provide authorization for appropriations for activities under the Act and the FMSA at the levels requested for fiscal year 1975 in the President's budget. The principal substantive amendment is the creation of a new part VI to the Act, providing authority and funding authorization for assistance to promote peace in the Middle East.

II. PROVISIONS OF THE BILL

Title I. Middle East Peace

Section 2. This section adds a new part VI to the Act, consisting of four sections, as follows:

Section 901 sets forth a statement of policy, emphasizing that a peaceful settlement in the Middle East is essential to the security of the United States and world peace and that assistance programs in the Middle East can contribute to such a peaceful settlement. The section provides that United States assistance in the area should facilitate understanding between the Arab nations and Israel, support efforts to achieve economic progress and political stability, promote mutual respect and security, foster increased economic development, and thereby contribute to a just and durable peace in the Middle East and a community of free, secure and prospering nations in the area.

Section 902 authorizes the President to furnish assistance under the Act and credits and guarantees under the FMSA to carry out the purposes described in section 901. Such assistance, credits and guaranties are to be provided within the framework of existing law. No additional or special authority is provided by this section for Middle East programs.

Section 903 indicates the levels of military assistance and security supporting assistance appropriations intended for Middle East programs. The $100,000,000 for MAP is for Jordan while the $377,500,000 in supporting assistance is for Israel, Jordan and Egypt. The $330,000,000 in FMS credits and guaranties is for Israel and Jordan. This section does not authorize appropriations in addition to the amounts contained in the regular authorizations for military assistance, security supporting assistance and FMS credits and guaranties contained in the Bill.

Section 904 establishes a Special Requirements Fund of $100,000,000 for fiscal year 1975 to meet needs which cannot be foreseen in the normal budgeting, authorization and appropriation cycle, but that are important to the efforts by the United States to help achieve peace in the Middle East. The section contains a requirement that the Congress be currently informed on the programming and obligation of funds from the

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